

OPEN MEETING ITEM



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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

DATE: OCTOBER 25, 2005

DOCKET NO: W-02597A-04-0456

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

CEDAR GROVE WATER COMPANY
(CC&N EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

NOVEMBER 3, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

NOVEMBER 8, 2005 and NOVEMBER 9, 2005

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 CEDAR GROVE WATER COMPANY, TO
10 EXTEND ITS EXISTING CERTIFICATE OF
11 CONVENIENCE AND NECESSITY IN APACHE
12 COUNTY.

DOCKET NO. W-02597A-04-0456

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING:

August 23, 2005

10 PLACE OF HEARING:

Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE:

Yvette B. Kinsey

12 APPEARANCES:

Mark Grapp, on behalf of Cedar Grove Water
Company; and

Mr. David Ronald, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

16 **BY THE COMMISSION:**

17 On June 18, 2004, Cedar Grove Water Company ("Cedar Grove" or "Applicant") filed with
18 the Arizona Corporation Commission ("Commission") an application for an extension of its
19 Certificate of Convenience and Necessity ("Certificate") to provide water service in Apache County.

20 On June 21, 2005, the Staff of the Commission's Utilities Division ("Staff") filed a letter
21 indicating that Cedar Grove's application has met the sufficiency requirements as outlined in the
22 Arizona Administrative Code.

23 On June 27, 2005, by Procedural Order, a hearing on the matter was scheduled for August 23,
24 2005.

25 On July 29, 2005, Staff filed its Staff Report recommending approval of the application
26 subject to certain conditions.

27 On August 23, 2005, a full public hearing was held before a duly authorized Administrative
28 Law Judge of the Commission at its offices in Phoenix, Arizona. Cedar Grove appeared and Staff

1 appeared through counsel at the hearing and presented evidence and testimony. No members of the
 2 public appeared to give public comment. At the conclusion of the hearing, the matter was taken
 3 under advisement pending submission of a Recommended Opinion and Order to the Commission.

4 * * * * *

5 Having considered the entire record herein and being fully advised in the premises, the
 6 Commission finds, concludes, and orders that:

7 **FINDINGS OF FACT**

8 1. Cedar Grove is a sole proprietorship authorized to provide water service in an area
 9 east of Show Low, Arizona in Apache County. Cedar Grove is owned by Mr. Mark Grapp. In
 10 Decision No. 57990 (August 26, 1992), the Commission authorized the sale of assets and transfer of
 11 CC&N from Sunrise Vista Water Company to Mr. Mark Grapp, dba Cedar Grove Water Company.

12 2. Mr. Grapp also owns three other water systems, which include Silverwell Service
 13 Corporation dba Watco, Inc., Serviceberry Water Company, and A. Petersen Water Company, Inc.
 14 The water systems are current on their property taxes.

15 3. On June 18, 2004, Cedar Grove filed an application for an extension of its Certificate
 16 to provide water service in Apache County. Specifically, Cedar Grove's application requests
 17 authority to add approximately one-quarter square mile to it's existing certificated area of
 18 approximately seven and one-half square miles. Cedar Grove is located about 11 miles east of Show
 19 Low in Apache County.

20 4. On October 18, 2004, December 1, 2004 and June 17, 2005, Cedar Grove provided
 21 additional documentation to support its application.

22 5. On June 21, 2005, Staff filed a Letter of Sufficiency in this matter.

23 6. On June 27, 2005, a Procedural Order was issued setting the matter for hearing on
 24 August 23, 2005 and setting various other procedural deadlines.

25 7. On July 29, 2005, Cedar Grove docketed an Affidavit of Publication and letter
 26 indicating it had notified the property owners in the proposed extension area giving notice of the
 27 application and hearing date.

28 8. On July 29, 2005, Staff filed its Staff Report in this matter recommending approval of

1 the Application, subject to certain conditions. Specifically, Staff recommended that Cedar Grove
2 charge its existing rates for the extension area, file its Approval to Construct from the Arizona
3 Department of Environmental Quality within 365 days of an Order approving this Application, file a
4 rate case application by March 31, 2006, using a 2005 test year and that all compliance deficiencies
5 in Decision No. 66175 be cured prior to the hearing.¹ Additionally, Staff recommended that Cedar
6 Grove's Certificate be considered null and void without further Order of the Commission should
7 Cedar Grove fail to meet the above conditions with the time specified.

8 9. No intervention requests or objections to the application were filed.

9 10. The hearing was held as scheduled on August 23, 2005.

10 11. According to Staff's Report, Cedar Grove's Annual Report indicates that for the year
11 ending December 31, 2004, the company was serving 260 customers. Cedar Grove also reported
12 annual revenues of \$90,271, expenses of \$110,596 and a loss of \$20,325.

13 12. Staff's Report states that Cedar Grove's existing water system is comprised of three
14 wells with a total production capacity of 99 gallons per minute, 322,500 gallons of storage capacity,
15 booster pumps, pressure tanks and a distribution system serving 260 connections.

16 13. Staff concluded that based on historical growth rates, it is anticipated that the existing
17 service area would serve 365 customers at the end of five years. Cedar Grove anticipates that it will
18 provide service to an additional 12 customers in the proposed CC&N extension at the end of five
19 years. Therefore, Staff concluded that existing system has adequate production and storage capacity
20 to serve the existing and proposed CC&N area within a conventional five year planning period.

21 14. Cedar Grove has acquired a well in the requested service area and plans to develop
22 that well for domestic water service. Cedar Grove plans to construct 2,700 feet of new transmission
23 main to connect the new well to the existing system. Additionally, the Applicant will construct a
24 pumphouse and 15,000 gallon storage tank adjacent to the new well.

25 15. Cedar Grove anticipates that construction of the project will be \$36,000 and Staff
26 finds those estimates to be reasonable; however, Staff makes no conclusions about the proposed plant

27
28 ¹ Decision No. 66175 (August 13, 2003) relates to Silverwell Service Corporation, another water utility owned by Mr. Mark Grapp. See Finding of Fact No. 20.

1 costs for rate-making purposes.

2 16. The facilities necessary to provide service to the extension area will be financed
3 through owner investment.

4 17. Cedar Grove is in compliance with Arizona Department of Environmental Quality
5 ("ADEQ") and is delivering water that meets the water quality standards of the Safe Drinking Water
6 Act.

7 18. Cedar Grove is not within any Active Management Area ("AMA") and is not subject
8 to reporting and conservation rules.

9 19. According to Cedar Grove's application, the extension area will be comprised of
10 approximately 12 lots. Since the extension area is not a subdivision the developer is not required by
11 Arizona Department of Water Resources ("ADWR") to demonstrate an adequate water supply before
12 recording plats or selling parcels.

13 20. According to the Utilities Division Compliance Section, Cedar Grove has no
14 outstanding Commission compliance issues. However, Staff noted that Silverwell Service
15 Corporation, known as Watco, which is a water system owned by Mr. Grapp, is out of compliance
16 with Commission Decision No. 66175 (August 13, 2003). See Exhibit B, attached hereto and
17 incorporated herein by reference. At the hearing, Mr. Grapp testified that he believed that all
18 documentation regarding the Silverwell compliance issues had been submitted to the Commission
19 and that all compliance issues had been resolved.

20 21. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic
21 maximum containment level ("MCL") in drinking water from 50 micrograms per liter ("ug/l") to 10
22 ug/l. The date for compliance with the MCL is January 23, 2006.

23 22. According to Staff's Report, Cedar Grove's most recent data on arsenic concentration
24 showed that the company's three wells were in compliance with the new arsenic standard of 10 ug/l.

25 23. A Curtailment Plan Tariff ("CPT") is an effective tool to allow a water company to
26 manage its resources during periods of shortages due to pump breakdowns, droughts or other
27 unforeseeable events. Cedar Grove has an approved CPT that has been in effect since August 25,
28 2004.

24. Cedar Grove will provide water utility service to the customers in the extension area under its current authorized rates and charges.

25. Cedar Grove holds a franchise agreement with Apache County for the extension area.

26. Staff's recommendation in Finding of Fact No. 8 is reasonable.

27. Because an allowance for the property tax expense of the Company is included in the Company's rates and will be collected from its customers, the Commission seeks assurances from the Company that any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the Commission's attention that a number of water companies have been unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers, some for as many as twenty years. It is reasonable, therefore, that as a preventive measure the Company shall annually file, as part of its annual report, an affidavit with the Utilities Division attesting that the company is current in paying its property taxes in Arizona.

CONCLUSIONS OF LAW

1. Cedar Grove Water Company is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-281 *et seq.*

2. The Commission has jurisdiction over Cedar Grove Water Company and the subject matter of the application.

3. Notice of the application was provided in accordance with law.

4. There is a public need and necessity for water utility services in the proposed extension area.

5. Cedar Grove Water Company is a fit and proper entity to receive an extension of its water Certificate which encompasses the area more fully described in Exhibit A attached hereto.

6. Staff's recommendation in Findings of Fact No. 8 is reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Cedar Grove Water Company for an extension of its Certificate of Convenience and Necessity to include the area described in Exhibit A, attached hereto and incorporated herein by reference, is hereby granted subject to compliance with

1 the following ordering paragraphs.

2 IT IS FURTHER ORDERED that Mr. Mark Grapp, owner of Cedar Grove Water Company
3 and Silverwell Service Corporation shall comply with all unresolved compliance issues in Decision
4 No. 66175, attached hereto and incorporated herein by reference as Exhibit B, within 30 days of this
5 Decision.

6 IT IS FURTHER ORDERED that Cedar Grove Water Company shall charge the customers in
7 the area more fully described in Exhibit A, its existing rates and charges until further ordered by the
8 Commission.

9 IT IS FURTHER ORDERED that Cedar Grove Water Company shall file with Docket
10 Control a copy of the Approval to Construct issued by the Arizona Department of Environmental
11 Quality for the extension facilities within 365 days from the date of the Decision in this matter.

12 IT IS FURTHER ORDERED that Cedar Grove Water Company shall file a rate case
13 application by March 31, 2006, using a 2005 test year.

14 IT IS FURTHER ORDERED that in the event Cedar Grove Water Company fails to meet the
15 above conditions outlined in the last two ordering paragraphs, within the time specified, this Decision
16 is deemed null and void.

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IT IS FURTHER ORDERED that Cedar Grove Water Company shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: CEDAR GROVE WATER COMPANY

2 DOCKET NO.: W-02597A-04-0456

3
4 Mark Grapp
5 Cedar Grove Water Company
6 P.O. Box 1270
7 Phoenix, Arizona 85902

8 Christopher Kempley, Chief Counsel
9 Legal Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 Ernest G. Johnson, Director
14 Utilities Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, Arizona 85007
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EXHIBIT A

All of the Northeast Quarter of Section 23, Township 10 North, Range 24 East of the Gila and Salt River Base and Meridian, Apache County, Arizona.

EXHIBIT B

COMPLIANCE DELINQUENCIES

UTILITY: Silverwell Service Corporation

DOCKET: W-01979A-02-0900 **DECISION NO:** 66175

ACTION: Submit a report to the Compliance Section of the Utilities Division stating the amount refunded by customer name within 30 days of the effective date of the completion of the refunds.

COMPLIANCE DUE DATE: 4/1/2004 ☒ **Compliance Past Due**

UTILITY: Silverwell Service Corporation

DOCKET: W-01979A-02-0900 **DECISION NO:** 66175

ACTION: Report annually to the Commission the number of meters replaced and the annual non-account water as a percentage of water pumped. Submit the annual water loss reports by April 15th following the year of the effective date of this Decision. The water loss reports shall continue until the water loss is less than 10 percent, but in no case continue less than three years.

COMPLIANCE DUE DATE: 4/15/2004 ☒ **Compliance Past Due**

UTILITY: Silverwell Service Corporation

DOCKET: W-01979A-02-0900 **DECISION NO:** 66175

ACTION: File all past and current line extension agreements with the Commission for approval within 60 days of the effective date of this Decision.

COMPLIANCE DUE DATE: 10/15/2003 ☒ **Compliance Past Due**

DECISION NO. _____